

# YOUTH SERVICES POLICY

<b>Title:</b> Family and Medical Leave of Absence <b>Next Annual Review Date:</b> 11/06/2010	<b>Type:</b> A. Administrative <b>Sub Type:</b> 2. Personnel <b>Number:</b> A.2.5
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<b>References:</b> The Family and Medical Leave Act of 1993 (Public Law 103-3 as amended by the National Defense Authorization Act for FY 2008 Public Law 110-181) Section 585(a); Title 29, Part 825 of the Code of Federal Regulations; United States Code, Title 10, Subpart A, Section 101(a) (13) (B); Americans with Disabilities Act; U.S. Department of Labor, Wage and Hour Publication 1420 revised August 2001; Fair Labor Standards Act; Civil Service Rules, Chapter 11; La. Employment Discrimination law (La. R.S. 23:301 et seq.); YS Policies. A.2.1 "Employee Manual" and A.2.13 "Equal Employment Opportunity"	
<b>STATUS:</b> Approved	
<b>Approved By:</b> Mary L. Livers, Deputy Secretary	<b>Date of Approval:</b> 11/06/2009

## I. AUTHORITY:

Deputy Secretary of Youth Services (YS) as contained in La. R.S. 36:405. Deviation from this policy must be approved by the Deputy Secretary.

## II. APPLICABILITY:

Deputy Secretary, Undersecretary, Assistant Secretary, Chief of Operations, Deputy Assistant Secretaries, Deputy Undersecretary, Facility Directors, Regional Managers, all other personnel who are authorized to approve leave for employees under their jurisdiction, and all employees eligible for leave under the Family Medical Leave Act, as amended.

It is the responsibility of each Unit Head to ensure that all necessary procedures are in place for proper management and administration of this policy.

## III. PURPOSE:

To outline the conditions under which an employee may request leave from work for a limited period of time with job protection, group health and life coverage, and no loss of accumulated service in accordance with requirements described in the federal Family and Medical Leave Act (FMLA) of 1993, as amended in 2008 under Section 585 of the National Defense Authorization Act, and in Civil Service Rules. For further clarification, the Department of Labor issued a Final Rule,

providing military family leave and updates to the Family and Medical Leave regulations. The Final Rule updates can be located on the Department of Labor's website: <http://www.dol.gov/esa/whd/fmla/finalrule.htm>.

#### IV. DEFINITIONS:

**Active Duty** – duty under a call or order to active duty under title 10, section 101(a) (13)(B) of the United States Code.

**Child** – a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability.”

**Continuing Treatment** - a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health conditions; a regimen of continuing treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and similar activities that can be initiated without a visit to a health care provider.

**Covered Service Member** – a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, has a condition that was incurred in the line of duty while on active duty which prevents the performance of his or her military duties, or is otherwise on the temporary disability retired list, for a serious injury or illness.

**Equivalent Position** – has the same pay, benefits, and working conditions, including privileges, perquisites and status. Intangible, immeasurable aspects of the job (i.e., the perceived loss of potential for future promotional opportunities) are not guaranteed. Equivalent positions will be at the same or a geographically proximate work site as that to which the employee had previously been assigned.

**FMLA** - Family and Medical Leave Act of 1993.

**Health Care Provider -**

- A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices;
- Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist) authorized to practice in the State and performing within the scope of their practices as defined under State law;

- Nurse practitioners, nurse-midwives, and clinical social workers who are authorized to practice under state law and who are performing within the scope of their practices as defined under State law;
- Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts.
- Any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits;
- A health care provider as defined above who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulation of that country; or
- For servicemember leave only, a health care provider must be either a DOD or VA health care provider, or either a health care provider authorized as network or non-network by TRICARE (the insurance carrier for those in military service).

***Incapable of Self-Care*** - the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" or "instrumental activities of daily living" (i.e., caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones, using post office, etc.).

***Incapacity*** - the inability to work, attend school, perform the duties of military office/grade, rank, or rating, or perform other regular daily activities due to the treatment or recovery of a serious health condition-

***Intermittent Leave*** - leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from a half-hour or more to several weeks (i.e., leave taken on an occasional basis for medical appointments, or several days at a time spread over a period of six months).

***Loco Parentis*** - those individuals with day-to-day responsibilities to care for and financially support a child. A biological or legal relationship is not necessary; however, documentation of the responsibility shall be required, i.e., an affidavit signed by a notary and/or two witnesses, income tax returns, etc.

***NDAA*** – National Defense Authorization Act for FY2008 (Public Law 110-181), which permits a “spouse, son, daughter, parent, or next of kin” to take up to 26 workweeks of leave to care for a member of the Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation,

or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

**Next of Kin** – the closest blood relative, as defined for this policy under National Defense Authorization Act for FY2008.

**Outpatient Status** – with respect to a covered servicemember, the status of a member of the Armed Forces assigned to:

- a military medical treatment facility as an outpatient; or
  - a unit established for the purpose of providing command control of members of the Armed Forces receiving medical care as outpatients.

**Parent** - the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child. The term does not include parent "in-laws."

**Physical or Mental Impairment** - an impairment that substantially limits one or more of the major life activities of an individual as defined by the Americans with Disabilities Act.

**Qualifying Exigency** – DOL Final Rule refers to a number of broad categories for which employees can use FMLA leave: (1) Short-notice deployment; (2) Military events and related activities; (3) Childcare and school activities; (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

**Reduced Work Schedule** - leave that reduces the usual number of hours per workday or workweek of an employee.

**Serious Health Condition** - an illness, injury, impairment, or physical or mental condition that involves one of the following:

- Hospital Care - inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
- Absence Plus Treatment - a period of incapacity of more than three consecutive calendar days (including any subsequent treatment period of incapacity relating to the same condition), that also involves:
  - a. treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider, or

- b. treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
- Pregnancy - any period of incapacity due to pregnancy, or for prenatal care (ongoing pregnancy, severe morning sickness, prenatal care, childbirth and recovery from childbirth are considered serious health conditions).
- Chronic Condition Requiring Treatment - a chronic condition which:
  - a. requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
  - b. continues over an extended period of time (including episodes of a single underlying condition); and
  - c. may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc).
- Permanent/Long-term Conditions Requiring Supervision - a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's disease, a severe stroke, or the terminal stages of a disease.
- Multiple Treatment (Non-Chronic Conditions) - any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity or more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Examples of Serious Health Conditions are:

- a. appendicitis
- b. back conditions requiring extensive therapy or surgical procedures
- c. emphysema
- d. heart attacks, conditions requiring bypass surgery and valve operations
- e. injuries caused by accidents including restorative dental surgery after an accident
- f. most cancers and removal of cancerous growths
- g. ongoing pregnancy, severe morning sickness, prenatal care, childbirth and recovery

- h. pneumonia
- i. severe arthritis, nervous disorders and respiratory conditions
- j. severe illness but not receiving continuing active care from a doctor such as Alzheimer's disease and late-stage cancers
- k. strokes
- l. treatment for a serious, chronic health condition which, if left untreated, would likely result in an absence of more than three days
- m. treatment for substance abuse if inpatient treatment is required
- n. In the case of a member of the armed services, including a member of the National Guard or Reserves, an injury or illness incurred by the member in line of duty on activity duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

Examples of Serious Health Conditions for Intermittent or **Reduced Leave** Schedule When Medically Necessary:

- a. a course of medication or therapy to resolve a condition
- b. treatment for early stage cancer (chemotherapy)
- c. physical therapy after a hospital stay or because of severe arthritis
- d. prenatal care

***Servicemember Family Leave*** – also called Military Family Leave; an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the service member. The leave shall only be available during a single 12-month period.

***Spouse*** - a husband or wife as defined or recognized under State law for purposes of marriage.

***Treatment*** - for the purpose of this policy, medical care that includes examination to determine if a health condition exists and evaluation of the condition, and does not include routine physical examinations, eye examinations, or dental examinations.

***Unit Head*** - Deputy Secretary, Facility Directors, and Regional Managers.

***YS Central Office*** - Offices of the Deputy Secretary, Assistant Secretary, Undersecretary, Chief of Operations, Deputy Undersecretary, Deputy Assistant Secretaries, and their support staffs.

**V. POLICY:**

It is the Deputy Secretary's policy to grant family and medical leave to those employees whose family and/or individual medical needs require their absence from work and who are eligible for such leave. Due to the sensitive and personal nature of FMLA requests, the request and all related information shall only be shared with those employees who have a business need to know and shall be confidential at all levels. It is the policy of Youth Services:

- A. to provide up to 12 workweeks, or 26 workweeks in a case under the National Defense Authority Act for FY 2008, of job-protected, paid or unpaid leave during any 12-month period to eligible employees for certain specified family and medical reasons
- B. to maintain eligible employees' group health and life insurance coverage at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave; and
- C. to restore eligible employees to their same or equivalent positions at the conclusion of their leave as provided by the Family and Medical Leave Act of 1993, as amended.

**VI. PROCEDURES:**

In order for YS to consistently administer the FMLA regulations, the following procedures have been developed for managers, supervisors and all individuals charged with the responsibility of FMLA leave administration.

- A. When an employee requests leave, either verbally or in writing, the supervisor shall determine if the leave meets the criteria of the FMLA, regardless of whether the employee is specifically requesting leave under the FMLA or not.
  - 1. SF-6 Application for Leave (leave slip) provides basic information in determining reasons for leave.
  - 2. If the requested leave appears to meet the criteria of FMLA, the employee's supervisor must complete the FMLA Eligibility Checklist [Attachment A.2.5 (c)] to determine whether or not the employee is eligible for FMLA leave.
  - 3. Unit payroll clerks shall use the Verification of FMLA Entitlement form [Attachment A.2.5 (d)] to determine employee eligibility. Unit payroll clerks shall be responsible for completing this form.

4. The employee is expected to give notice within two working days of learning of the need for FMLA leave.

**B. Once the employee is determined to be eligible for FMLA:**

1. The supervisor shall provide the employee with the FMLA Leave Notification form [Attachment A.2.5 (e)] prior to beginning FMLA leave, if possible, but no later than three days after the employee begins FMLA.

Note: If the employee did not request FMLA prior to beginning FMLA leave, the immediate supervisor shall tentatively designate the employee as being on FMLA leave after the employee has been out three consecutive days using Attachment A.2.5 (e) as official notification.

2. The supervisor shall have the employee complete the FMLA Employee Request Form [Attachment A.2.5 (a)].

Note: If the employee refuses to sign the Employee Request Form, the SF-6 Application for Leave will serve as the FMLA request. The supervisor shall make notation that the leave is FMLA in the remarks section of the SF-6 and initial the comments.

3. The supervisor shall provide the employee with a copy of this policy.
4. If the FMLA leave requires medical certification, the supervisor shall provide the employee with the Certification of Health Care Provider form [Attachment A.2.5 (b)], a Certification of Serious Injury or Illness of Covered Servicemember for Military Family Leave form [A.2.5(h)], and a Certification of Qualifying of Exigency For Military Family Leave form [A.2.5(i)]. This can be done when the FMLA Leave Notification form [A.2.5 (e)] is given to the employee.

Note: When leave is foreseeable, and 30 days' notice has been provided, the employee may be required to provide the requested medical certification within 15 days after the request has been made.

5. The supervisor shall immediately forward all information related to the FMLA request to the Human Resource Manager.



6. Once the medical certification form is received from the health care provider, the supervisor will review and determine whether the certification meets the FMLA criteria. If so, the supervisor shall immediately confirm to the employee that the leave shall be designated as FMLA [Attachment A.2.5 (f)], with a copy to the Human Resource Manager.

Note: If the leave is clearly designated as FMLA in the Family and Medical Leave Notification form, this step is not necessary.

- C. The Human Resource Manager will review all documentation relative to the employee's request for, or supervisor's designation of, FMLA leave.

Note: If medical certification was requested but not received within 15 days of the supervisor's request, the supervisor shall consult with the Human Resource Manager and make a determination as to what action should be taken.

- D. If an employee specifically requests leave under FMLA and, after completing step A of this procedure, the leave request is determined as not qualifying, or the employee is determined ineligible, the supervisor must immediately forward the requested documentation to the Human Resource Manager for final review and consultation prior to an employee being denied FMLA leave.

- E. The FMLA Alert Form [Attachment A.2.5 (g)] is to be completed by the time administrator for any one of the situations listed below and faxed immediately to the Human Resource Manager.

1. Employee is designated on FMLA leave;
2. Employee began FMLA leave without pay;
3. Employee has been on FMLA leave without pay and returned to work; or
4. Employee exhausted FMLA entitlement and remains on leave without pay.

Note: It is critical that the Human Resource Manager is notified immediately of any one of the above occurrences so that appropriate entries can be made in the ISIS HR System to maintain the employee's benefits.

- F. Upon exhaustion of any unpaid FMLA entitlement, the Human Resource Office will notify the employee of his/her responsibility to resume payment of premiums for health and life insurance coverage.

- G. Upon exhaustion of the 12-workweek FMLA entitlement, or the 26-workweek entitlement under NDAA, the Human Resource Manager shall notify the employee that the FMLA entitlement has ended and that any additional leave must be applied for, and will be evaluated in accordance with standard Civil Service rules and regulations and YS policy and procedures.

The completed applicable attachments shall be maintained in the employee's official FMLA file by the Human Resource Manager to comply with the record-keeping requirements established by the Department of Labor.

## **VII. EMPLOYEE ELIGIBILITY:**

To be eligible to request FMLA, an employee:

- A. shall have been employed by the State of Louisiana for at least 12 months. The 12 months of employment need not be consecutive months. If an employee is maintained on the payroll for any part of a week, that week counts as a week of employment, and
- B. shall have worked at least 1,250 in state hours during the 12-month period immediately preceding the commencement of the leave. Fair Labor Standards Act (FLSA) hours-worked principles shall be applied in determining whether an employee has worked 1,250 hours. Therefore, all hours, including overtime and on-call time, meet the FLSA hours-worked requirements.

## **VIII. LEAVE ENTITLEMENT:**

Employees may request up to a total of 12 workweeks, or 26 workweeks of FMLA under the NDAA, in accordance to the following.

- A. An eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following reasons:
1. the birth of a son or daughter, and to care for the newborn;
  2. placement with the employee of a child for adoption or foster care;
  3. to care for the employee's spouse, child, or parent with a serious health condition;
  4. a serious health condition that makes the employee unable to perform the functions of the employee's position; or
  5. to deal with deployment or return of a family member on Active Duty under NDAA, under the term "qualifying exigency" in the NDAA, for non-medical demands or circumstances as defined and outlined in the amended FMLA of 1993.

- B. An eligible employee shall be entitled to a total of 26 workweeks of leave during any 12-month period to care for a spouse, son, daughter, parent, or next of kin who is a member of the Armed Forces and who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or on the temporary disability retired list for a serious injury or illness.
- C. The right to take FMLA leave applies equally to male and female employees. A father, as well as a mother, can take leave for the birth, adoption, or foster care placement of a child.
- D. Employees working a reduced workweek will be granted FMLA leave on a pro-rated basis when working less than 40 hours per week. (Example: 32 hrs/wk x 12 weeks = 384 hours; 32 hrs/wk x 26 weeks = 832 hours)

**IX. GENERAL PROVISIONS:**

- A. The 12-month FMLA entitlement period is measured forward from the date of first use.
- B. Youth Services will require the use of accrued paid leave (annual, sick and, whenever applicable, hour-for-hour compensatory leave and time and a half compensatory leave) for FMLA leave purposes.
- C. Accrued paid leave shall run concurrently with any FMLA leave granted to an eligible employee.
- D. Effective January 16, 2009, new rules (825.207) allow government employers to use time and a half compensatory leave (1.5K) for an FMLA absence and count that absence against the employee's FMLA leave entitlement.
- E. An employee who has exhausted all sick leave but is unable to return to work cannot be terminated for that reason if the employee has not used all of his or her 12-workweek FMLA entitlement or the 26-workweek leave allowed under NDAA.
- F. Leave in excess of the FMLA entitlement may be granted by the appointing authority in accordance with Civil Service Rules and YS leave policy.
- G. The appointing authority or supervisor may require an employee on FMLA leave to report every 30 days on the employee's status and intent to return to work. The employee may also be required to present a current medical certification.

- H. When accrued paid leave balances are insufficient to meet the FMLA leave entitlement, unpaid leave shall be granted.

**X. DESIGNATING FMLA LEAVE:**

- A. It is the appointing authority's responsibility, in all circumstances, to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee. The designation must be based on information received from the employee or the employee's spokesperson (spouse, adult child, parent, doctor).
- B. If leave is foreseeable and the employee has provided advance notice, as required, the supervisor shall designate the leave prior to beginning FMLA, if possible, but no later than two business days after the employee begins FMLA leave, with written notification to the employee. The designation shall be effective on the date of notification to the employee. The employee shall consult with his/her supervisor prior to scheduling of leave so as not to disrupt the operations of the unit.
- C. If leave is not foreseeable (i.e., medical emergency for employee or a family member's serious health condition) and the employee did not request FMLA leave prior to the beginning of leave, the supervisor shall tentatively designate the employee as being on FMLA leave after the employee has been out three consecutive days [Attachment A.2.5 (e)]. If, in the judgment of the supervisor, it appears to be a FMLA-qualifying event, the supervisor shall confirm, in writing, the leave as FMLA-qualifying, effective on the fourth day of the employee's absence. If the leave is a non-qualifying FMLA event, the supervisor shall withdraw the designation, with written notification to the employee.
- D. An employee absent from work for a non-qualifying FMLA event shall be placed in the appropriate leave status.
- E. A supervisor may not designate FMLA leave after an employee has returned to work except for the two conditions listed below.
  - 1. If an employee was absent for a FMLA reason and the supervisor did not learn the reason for the absence until the employee's return, the supervisor may designate (within two business days of the employee's return to work) the leave retroactively with appropriate written notice to the employee. Similarly, an employee may request retroactive designation within two business days; otherwise the employee may not assert FMLA protection for the absence.

2. If the supervisor knows the reason for the leave, but has not been able to confirm that the leave qualifies under FMLA, or the requested medical certification is delayed, or a second or third medical opinion has been requested, the supervisor should make a preliminary designation, and so notify the employee. Upon receipt of the requisite information, the supervisor shall confirm in writing the preliminary designation as FMLA-qualifying. If the requisite information fails to confirm that the reason was FMLA-qualifying, the supervisor must withdraw the designation.

**XI. SPECIAL PROVISIONS BY LEAVE ENTITLEMENT:**

**A. Birth of Child**

1. Ongoing pregnancy, severe morning sickness, prenatal care, childbirth and recovery from childbirth are considered serious health conditions, and leave taken for these conditions is counted toward the total 12 workweek entitlement.
  - a. FMLA leave for the birth of a child expires at the end of the 12-month period beginning on the date of the birth; and
  - b. FMLA leave taken in relation to pregnancy, severe morning sickness and prenatal care prior to the birth of the child is included in the 12-workweek entitlement.
2. Sick leave shall be granted for the conditions described in A.1.a. and A. 1.b. Annual leave, hour-for-hour compensatory leave, time and a half compensatory, and/or leave without pay shall be granted for the care of a child after the recovery process to meet the 12-workweek FMLA entitlement. Accrued time and a half compensatory leave shall be taken prior to accrued compensatory leave earned at the hour-for-hour (straight time) rate, annual leave or leave without pay.

Time and a half compensatory leave and hour-for-hour compensatory leave may be taken in lieu of sick leave if requested by the employee and approved by the appointing authority.
3. A medical certification from a health care provider is required to substantiate the anticipated date of delivery and the duration of the recovery process.

4. Unless the supervisor agrees, leave may not be utilized intermittently or on a reduced leave schedule for FMLA entitlement due to a birth of a child. The supervisor's agreement is not required for leave during which the mother has a serious health condition in connection with the birth.
5. If both the father and the mother are state employees, the father and mother are limited to sharing a combined total of 12 workweeks for the birth of the child. The father shall be granted time and a half compensatory leave, hour-for-hour compensatory leave, annual leave, or leave without pay.

**B. Placement of Child with the Employee for Adoption and Foster Care**

An eligible employee shall be entitled to 12 workweeks for placement of a child for adoption or foster care.

1. FMLA leave for the placement of a child with an employee for adoption or foster care expires at the end of the 12-month period beginning on the date of the placement.
2. FMLA leave may begin before actual placement if an absence from work is required for placement to proceed. Leave taken to attend counseling sessions, appear in court, consult with an attorney or the doctor representing the birth parent, or submitting a physical examination is counted toward the total 12-workweek entitlement.
3. Except for medical reasons involved in the placement of a child for adoption or foster care, annual leave, hour-for-hour compensatory leave and leave without pay shall be granted to meet the 12-workweek entitlement. Accrued compensatory leave earned at time and a half and the straight-time rate shall be taken prior to the granting of leave without pay.
4. If both parents are employed by the state, the total entitlement for both parents combined is 12 workweeks.
5. Unless the supervisor agrees, leave shall not be utilized intermittently or on a reduced leave schedule after the placement of a child with the employee for adoption or foster care.
6. There is no age limit on a child being adopted or placed for foster care for determining leave eligibility.

7. The source of an adopted child is not a factor in determining leave eligibility.
8. Foster care must involve a state action in the removal of a child from parental custody, rather than just an informal arrangement for care of another person's child.

**C. Care for Spouse, Child, or Parent, and "Next of Kin" under NDAA**

1. Leave shall be granted under the FMLA to an eligible employee who is needed to care for a spouse, son, daughter, or parent with a serious health condition and/or who qualifies as next of kin under Servicemember Family Leave as defined in Section IV, "Definitions."
2. The term "needed to care for" encompasses both physical and psychological care, to include the following situations, which are counted toward the total 12-workweek entitlement, or 26-workweek under NDAA.
  - a. the family member is incapable of self care;
  - b. providing psychological comfort and reassurance which are deemed beneficial to a seriously ill child, spouse or parent receiving inpatient care;
  - c. the employee is needed to fill in for others who are caring for a family member, or to make arrangements for changes in care, such as transfer to a nursing home;
  - d. the employee is needed intermittently, such as instances where other care is normally available, or care responsibilities are shared with another member of the family or a third party; and/or
  - e. a covered member of the Armed Forces is otherwise on the temporary disability retired list.
3. Medical certification from a health care provider is required to substantiate the need for such care.
4. Annual leave, hour-for-hour compensatory leave, time and a half compensatory leave, and leave without pay shall be granted to care for a family member, with the exception that any accrued hour-for-hour compensatory leave shall be taken prior to the granting of annual leave or unpaid leave to meet the 12-workweek entitlement or 26-workweek under NDAA.

5. Leave shall be granted under the FMLA to an eligible employee to care for a spouse, child, parent or next of kin as follows:
  - a. to care for a spouse, 12 workweeks (or 26 under NDAA) are allowed for each employee regardless of whether or not spouse is employed by the state;
  - b. to care for a child, 12 workweeks are allowed for each parent;  
Note: FMLA entitlement does not cover the care of a son-in-law/daughter-in-law.
  - c. Twelve (12) workweeks combined will be allowed to care for a parent if both employees work for the state; and  
Note: FMLA entitlement does not cover the care of a mother-in-law/father-in-law.
  - d. When two employees who are employed by the state utilize a portion of the total 12-workweek entitlement for the birth of a child, adoption, foster care or to care for a parent, each shall be entitled to the difference between the amount he or she has taken individually for the above purposes and the 12 workweeks FMLA leave allows for purposes of personal illness or to care for a spouse or sick child.
6. When medically necessary, leave may be taken intermittently or on a reduced work schedule. Employees must try to schedule their intermittent leave so as not to unduly disrupt the employer's business.
7. The supervisor may require the employee to report every 30 calendar days on the status and intention of the employee to return to work. He may also request a current medical certification.
8. Unmarried domestic partners do not qualify for FMLA leave to care for their partners.

**D. Employee Serious Health Condition**

1. FMLA entitlement shall be granted to an eligible employee for his or her own "serious health condition" as defined in Section IV, "Definitions."
2. Medical certification from a health care provider is required to substantiate the serious health condition.
3. A serious health condition does not cover short-term conditions for which treatment and recovery are for a short period of time. Leave



taken for a non-serious health condition is not counted toward the 12-workweek entitlement.

4. Sick leave shall be granted to an employee with a serious health condition. Also, accrued time and a half compensatory leave, accrued hour-for-hour compensatory leave, annual leave, and leave without pay (LWOP) shall be granted to meet the 12-workweek FMLA entitlement. Accrued time and a half compensatory leave shall be taken prior to the granting of hour-for-hour compensatory leave, annual leave or unpaid leave. Accrued time and a half and hour-for-hour compensatory leave may be taken in lieu of sick leave if requested by the employee and approved by the appointing authority.
5. When medically necessary, leave may be taken intermittently or on a reduced leave schedule. Employees must try to schedule their intermittent leave so as not to unduly disrupt the employer's business.
6. Spouses who are both employed by the state are entitled to 12 workweeks of FMLA leave each for their own illnesses.
7. The supervisor may require the employee to report every 30 days on the status and intention of the employee to return to work. He/she may also request a current medical certification.

Note: Effective May 18, 2009, ISIS HR changed the automatic leave code rolls in the system. The new leave code rolls are as follows:

FMLA Self = LB (sick) > 1.5 K > ST K (straight comp.) > Annual

FMLA Family = 1.5 K > ST K (straight comp.) > Annual

FMLA Workers Comp = LB (sick) > 1.5 K > ST K (straight comp.) > Annual

## **XII. FITNESS-FOR-DUTY STATEMENT:**

- A. As a condition of restoring an employee whose FMLA leave was initiated by the employee's own serious health conditions, YS requires an employee to obtain and present a certificate from the employee's health care provider that the employee is able to resume work. The fitness-for-duty certification will contain only information regarding the particular condition that caused the employee's need for FMLA leave. An Essential Functions Form furnished by YS must be completed by the health care provider at the same time the fitness-for-duty statement is obtained.
- B. For those employees who qualify as disabled under the Americans with Disabilities Act, fitness-for-duty examinations must be job-related and

consistent with business necessity. The FMLA does not allow second or third fitness-for-duty certifications.

- C. The Department of Labor's Final Rule amended the fitness-for-duty. Where reasonable job safety concerns exist, an employer may require a fitness-for-duty certification before an employee may return to work when the employee takes intermittent leave.

### **XIII. REINSTATEMENT RIGHTS:**

- A. An employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
- B. The right to reinstatement exists even if the employee's position has been restructured to accommodate the employee's absence or the employee was replaced. However, an employee is entitled to no greater right to reinstatement than he would be if he were not on leave. For example, if the employee's position is affected by a layoff, the employee is subject to the same layoff provisions as employees not on leave.
- C. If an employee is unable to perform the essential functions of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no rights to restoration to another position. However, YS' obligation may be governed by the Americans with Disabilities Act (ADA).

### **XIV. BENEFITS:**

- A. During any FMLA leave, YS will maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.
- B. The same health plan benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave.
- C. If a new health plan, benefits, or changes in health benefits or plans are provided while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. Notice of any opportunity to change plans or benefits shall also be given to an employee on FMLA leave by the employee's supervisor.
- D. Except as required by COBRA, YS' obligation to maintain health benefits during leave under FMLA ceases if and when the employment relationship

would have terminated if the employee had not taken FMLA leave, an employee informs YS of his/her intent not to return from leave, or the employee fails to return from leave or continues on leave after exhausting his/her FMLA leave entitlement in the 12-month period.

- E. In cases where employees are on unpaid FMLA leave (LWOP), YS shall continue to pay the following insurance premiums:
  - 1. employer's and employee's share of health insurance premiums, including employee + child/children, employee + spouse or family; and
  - 2. employee life insurance premium.
- F. Prior to exhausting unpaid FMLA entitlement, the appropriate Human Resource Manager shall notify the employee of his/her responsibilities to resume payment of such premiums and that failure to comply could result in loss of health insurance coverage. Reimbursement of premiums paid while on FMLA shall be required as per the Act (FMLA).

**XV. EMPLOYER NOTICES:**

All YS offices and facilities (statewide) are required to post and keep posted on the premises where employees are employed, a notice explaining the FMLA provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. Employers are required to provide various FMLA notices to employees within five (5) business days.

**XVI. EMPLOYEE NOTICES:**

If the need for FMLA leave is foreseeable, an employee should provide the supervisor at least 30 days advance notice before FMLA leave is to begin based on the expected birth, placement of child with employee for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member.

If the need for FMLA leave is not foreseeable, an employee should give notice of the need for FMLA leave as soon as practical under the facts and circumstances of the particular case. The employee is expected to give written notice within two working days of learning of the need for leave. An employee needing FMLA leave must follow the employer's usual and customary call-in procedures for reporting an absence, absent unusual circumstances.

**XVII. MEDICAL CERTIFICATION:**

- A. An employee's request for leave to care for the employee's seriously-ill spouse, son, daughter or parent, or due to the employee's own serious health condition, must be supported by a certification issued by the health care provider for the employee or the employee's ill family member using Attachment A.2.5 (b) "Certification of Health Care Provider".
- B. When leave is foreseeable, and a 30-day notice has been provided, the employee should provide the medical certification before leave begins. When this is not possible, the employee should provide the requested medical certification within 15 calendar days after the request has been made.
- C. An employer may require that:
  - 1. Leave for a qualifying exigency be supported by a copy of the covered military member's active duty orders, a certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party.
  - 2. Leave to care for a covered servicemember with a serious injury or illness be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family.
- D. A supervisor who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at YS' expense. The appointing authority or designee is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider cannot be employed on a regular basis by the state. If the second opinion differs from the first opinion, the appointing authority may require the employee to obtain certification from a third health care provider at YS' expense. The third opinion shall be final and binding. The third health care provider must be agreed upon jointly by the appointing authority and the employee. If the appointing authority does not attempt in good faith to reach agreement on who to select for the third opinion, the appointing authority will be bound by the first certification. If the employee does not attempt in good faith to reach agreement on who to select for the third opinion, the employee will be bound by the second certification.

- E Any expense incurred in obtaining medical certification from a health care provider shall be the responsibility of the employee. If YS requires a second or third opinion, the expense shall be incurred by YS.
- F. If an employee fails to provide a requested medical certification in a timely manner to substantiate the need for FMLA due to a serious health condition, the supervisor shall consult with the appropriate Human Resource Manager. If an employer deems a medical certification to be incomplete or insufficient, the employer must specify in writing what information is lacking, and give the employee seven (7) calendar days to cure the deficiency. The employee will be placed on LWOP until such time as the certification is produced.

#### **XVIII.RECORDS:**

FMLA provides that supervisors shall make, keep, and preserve records pertaining to their obligation under the Act in accordance with the record keeping requirements of Section 11 (c) of the Fair Labor Standards Act. Records must be kept no less than three years and be available for inspection, copying, and transcription by representatives of the U. S. Department of Labor upon request.

Medical certifications, recertification or medical histories of employees or employees' family members shall be maintained in separate files and be treated as confidential.

Federal regulations require employers to maintain records that disclose the following:

- A. basic payroll and identifying employee data, including name, address, occupation, rate or basis of pay and terms of compensation, daily and weekly hours worked per pay period, additions to or deductions from wages, and total compensation paid;
- B. dates FMLA leave is taken by employee;
- C. the hours of leave, if FMLA leave is taken in increments of less than one full day;
- D. copies of employee notices of leave (application for leave shall indicate FMLA in "Remarks" section);
- E. any documents describing employees' benefits or employer policies and practices regarding the taking of paid and unpaid leave;
- F. premium payments of employee benefits; and

- G. records of any dispute between the employer and an employee regarding designation of leave as FMLA leave.

**XIX. FMLA AND OTHER LAWS:**

FMLA does not supersede any state or local law that provides greater family or medical leave rights than those provided by FMLA, nor does it modify or affect other federal or state laws such as the Americans with Disabilities Act and Workers' Compensation. Leave taken under other federal or state laws which meets the criteria of FMLA shall run concurrently with FMLA leave.

The Louisiana Employment Discrimination law (LA R.S.23:301 et seq.) requires employers with more than 25 employees to allow a female employee affected by pregnancy, childbirth or related medical conditions to take leave on account of pregnancy for a "reasonable period of time" not to exceed four months. "Reasonable period of time" means that period during which the employee is disabled on account of pregnancy, childbirth or related medical conditions.

The Department of Labor is not responsible for enforcing state laws, nor may a state enforce the federal FMLA.

The employee who believes that YS has violated the FMLA may either file a complaint using the YS employee grievance system (YS Policy No. A.2.1), or file a private lawsuit in federal court.

The Human Resource Manager should be consulted when encountering these situations.

**Previous Regulation/Policy Number:** A.2.5

**Previous Effective Date:** 01/15/2006



**Attachments/References:** A.2.5 (a) FMLA Employee Request Form 11-09.doc



A.2.5 (b) Certification of Health Care Provider 11-09.doc



A.2.5 (c) FMLA ELIGIBILITY CHECKLIST 11-09.doc



A.2.5 (d) VERIFICATION OF FMLA ENTITLEMENT 11-09.doc



A.2.5 (e) FAMILY AND MEDICAL LEAVE NOTIFICATION 11-09.doc



A.2.5 (f) CONFIRMATION LETTER 11-09.doc



A.2.5 (g) FMLA ALERT FORM 11-09.doc



A.2.5 (h) Certification for Serious Injury or Illness of Covered Servicemember - WH-385.pdf

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A.2.5 (i) Certification of Qualifying Exigency for Military Family Leave - WH-384.pdf



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